

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES M. CURLESS

Claimant

VS.

SOUTHERN EDUCATION COUNCIL

Respondent

AND

UNITED STATES FIDELITY & GUARANTY CO.

Insurance Carrier

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Docket No. 233,051

ORDER

Respondent appeals from a preliminary hearing Order dated July 27, 1998 by which Administrative Law Judge John D. Clark granted claimant's request for preliminary benefits.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction by granting benefits for an injury which did not arise out of and in the course of claimant's employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds the Order should be reversed. Claimant, a telemarketer, was injured when he fell down the steps outside respondent's offices during his lunch break. The steps lead from the parking lot to the entrance used primarily by respondent's employees. Respondent argues this claim is not compensable because claimant was not required to remain in or around the building during his lunch breaks and claimant was not paid during his break. Claimant contends the injury is compensable because it occurred on property which should be considered the respondent's premises.

The evidence establishes that respondent is one of several tenants that lease space in the building. Claimant was outside the building in a common area when he fell. Although he was not planning to leave the grounds or eat lunch, claimant was not on duty

when he was injured. Claimant explained that he was only paid while he is logged onto his computer. Claimant and other employees were instructed to log off their computers during the shift change and lunch break. Because claimant was not on duty when he was injured, his accident did not arise out of and in the course of his employment.

Because claimant was between shifts and on his lunch break when his accident occurred, it is argued that the "coming and going rule" applies to this injury. Claimant contends he was on the respondent's premises when he fell. By case law, premises are defined to include property controlled by a respondent but to exclude common areas. Thompson v. Law Offices of Alan Joseph, 19 Kan. App. 2d 367, 869 P.2d 761 (1994). In this case, the control of common areas was retained by the lessor under the terms of the lease. Nothing in the record indicates the respondent had the kind of control over the common areas of the building and grounds that would enable it to have direct or immediate control over the risk of injury. The Appeals Board finds, therefore, that the property where claimant fell cannot be considered the premises of the respondent for purposes of workers compensation coverage. Furthermore, there was no special hazard or risk associated with the route from the parking lot to the respondent's office. Also, it is not alleged that claimant's injury was due to the employer's negligence. K.S.A. 44-508(f). Accordingly, the Appeals Board finds that the decision granting benefits should be reversed.

WHEREFORE, the Order of Administrative Law Judge John D. Clark dated July 27, 1998 should be, and the same is hereby, reversed and claimant is denied benefits as a result of the alleged August 12, 1997 accidental injury.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS
Kristine A. Purvis, Overland Park, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director